

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: Case No. 08-36705-bjh11

Superior Parts, Inc. Chapter 11

V. Date: 1/9/2009

(DEBTOR) TIME: 9:50 A.M.

VOLUME 1 OF VOLUME 1
HEARING BEFORE THE HONORABLE HARLIN DEWAYNE HALE,
UNITED STATES BANKRUPTCY JUDGE

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1 | COURT CLERK: All rise.

2 THE COURT: Please be seated. Take
3 appearances in -- please be seated, please.
4 Thank you. Take appearances in Superior Air
5 Parts, Inc.

6 MR. ROBERTS: Your Honor, Steve Roberts
7 representing the Debtor. Ms. Mary Frances Dunham
8 said she was going to be right back, but she's
9 here for the U.S. Trustee, so --

10 | THE COURT: Okay. Thank you.

11 MS. RUCKMAN: Good morning, Your Honor.
12 Deirdre Ruckman representing Textron, Inc., and
13 Avco Corporation, and also if I may this morning,
14 Your Honor, I'd like to introduce Mr. William
15 Freeman. He is a member of the California Bar.
16 Also representing Textron and Avco Corporation.
17 We've filed a Motion for Pro Hoc admission in
18 this case.

19 THE COURT: Welcome to our Court, and you
20 can participate this morning if you want to.

21 MR. FREEMAN: Thank you, Your Honor.

22 MR. LEONARD: Your Honor, Billy Leonard,
23 and then Kevin Good with Conner and Winters on
24 behalf of Aviation Parts Supply, Inc.

25 | THE COURT: Welcome.

1 MR. LEONARD: Thank you.

2 THE COURT: And then, Mr. Brescia, are
3 you on the phone?

4 MR. BRESCIA: I am on the line again,
5 Your Honor. Thank you. Duane Brescia also for
6 the Debtor.

7 THE COURT: Welcome. Mr. Roberts.

8 MR. ROBERTS: Your Honor, we've resolved
9 the objection on the bidding procedure --

10 THE COURT: Well, good.

11 MR. ROBERTS: -- during our break.

12 We're moving fairly fast in this case

13 THE COURT: I gathered that from my
14 discussions with Judge Houser.

15 MR. ROBERTS: And because of that, I
16 would like to give the Court an overview and put
17 on some testimony to support the motions to make
18 a record.

19 THE COURT: Sounds good. I have read
20 all your motions too.

21 MR. ROBERTS: Oh, all right. Start with
22 the relief requested. Well, no, I think I'll
23 start, kind of give you an overview of who
24 Superior Air Parts is.

25 Superior Air Parts sells parts for small

1 aircraft engines, piston-powered aircraft
2 engines. It's a very small market. You have a
3 Textron affiliate, Teledyne affiliate or
4 manufacturers, and then you have Superior. It's
5 like an after-market, like an independent car
6 parts-type of business, and then you have a
7 fourth seller in the market, and that basically
8 consists of the market for selling parts for
9 airplane engines for piston-powered small
10 aircraft.

11 Superior's been in business for forty years,
12 been in bankruptcy before in 1997. And they were
13 acquired -- oh, and they have their facility
14 here in Coppell, Texas, and they don't truly
15 manufacture, they're more like a Dell computers,
16 they assemble. They farm out the manufacturing,
17 they have tools all over the world that are in
18 the hands of other parties to make specialty
19 parts.

20 A unique part of this business is that in
21 order to manufacture and sell and put into the
22 stream of commerce an airplane engine part, you
23 have to have a parts manufacturing authorization
24 from the FAA. To get that, you have to do
25 testing, engineering, submit an approval for

1 parts, and get that approval to put that part
2 into the stream of commerce. PMAs are not
3 transferrable; however, if you took all the
4 intellectual property behind that PMA, you would
5 enable a buyer to go to the FAA with that
6 package, and say, "This has already been
7 approved, we would like approval to sell. So,
8 that's one component of this business.

9 We also have inventory and accounts
10 receivables. The company -- I'm going to
11 apologize for my voice and my coughing. It's a
12 balance between trying to stay clear-headed and
13 trying to stay medicated. I apologize for that.

14 A little more background. The Debtor was
15 acquired by Pulert AG (phonetic spelling) in
16 2006. That's a German company. Paid \$1 for the
17 stock and basically bought off, took assignments
18 of \$10 million in senior and unsecured debt. So,
19 it is technically a sole shareholder and the
20 secured creditor to the tune of \$10 million;
21 however, it doesn't appear they ever filed a UCC,
22 the UCC for the prior bank expired in 2007, so it
23 appears that is an unprotected \$10-million-dollar
24 lien.

25 If you'll notice, Pulert AG's counsel is not

1 here today. They don't have any objections to
2 our motions. Also in the record we have a letter
3 consenting to the use of cash collateral in this
4 case, so we don't need to get an order.

5 THE COURT: No, they're in their
6 insolvency proceeding; is that right?

7 MR. ROBERTS: They are in their own
8 insolvency proceeding in Germany. They also have
9 two to three board seats, the third board seat is
10 owned by Mr. Kent Ambergcrombie, the President of
11 the company who sits in the courtroom who's not
12 connected with the German insolvency
13 Administrator.

14 So, \$10 million of our debt is Thielert AG.
15 We have 12 to \$15-million-dollar, depending on
16 offsets, of debts to Thielert Aircraft Engines, a
17 sister company in Germany. It's also in its own
18 insolvency. And that's all trade debt. So,
19 essentially, Thielert AE has been financing, if
20 you will, the Debtor, since 2006 by providing a
21 net 12 to \$15 million in parts on credit.

22 This company in 2008 on \$22.4 million in
23 sales through November lost 4.7 million. In
24 2007, on \$30 million in sales, it lost \$5.6
25 million. This company has nowhere to go as far

1 as being able to internally reorganize.

2 The company set out -- Thielert AG set out
3 to sell either the stock or find a purchaser for
4 assets of this company as early as last Spring,
5 2008. This process we're asking the Court to
6 approve is not the beginning of the sales
7 process; we view it as the end of a sales
8 process. We're going to ask the Court for a
9 bidding procedure. We're going to ask the Court
10 -- and let me restate it this way. We filed a
11 motion to sell substantially all of the assets to
12 Avco Corporation, a Textron affiliate, for \$11.5
13 million. We've already set that hearing, have
14 that hearing set for February 24th. We're going
15 to ask today for a bidding procedure so if there
16 are bids, we will be showing up on the 24th
17 either for motion to sell to Avco or to the
18 highest bidder under the bidding procedure.

19 So, our proposal is basically to give parties
20 who may have shown an interest, who may show an
21 interest one more chance to step forward, and
22 that is the gist of the basic relief we're
23 requesting today. We had some other collateral
24 motions I'll discuss in a minute.

25 The financial picture of the company, while

1 we're in a hurry, the company had 35 employees up
2 until December 30th. On that date or the day
3 after, we signed the Asset Purchase Agreement
4 with Textron and immediately reduced our staff to
5 15 key employees that we deemed to be necessary
6 to preserve the assets of the company and to
7 follow through and effectuate any sale of the
8 company. As a matter of fact, under the Asset
9 Purchase Agreement of Textron, Textron agrees
10 with that assessment because we have agreed not
11 to terminate those employees without cause until
12 the closing. So, we're basically living off of
13 collections of Accounts Receivables. There are
14 still some sales. Obviously, our problem is, we
15 don't want to -- I mean, we can't sell parts
16 with warranties knowing we're not going to be
17 around to honor those warranties.

18 We have in evidence cash flows which show
19 that end of March, if our assessments are
20 optimistic, we may have \$600,000 cash yet left.
21 We have no idea what we're going to be collect in
22 accounts receivables. So, we also have about
23 \$450,000 insurance payment in March. So,
24 essentially, the longer we operate, the less
25 there's going to be to pay to the unsecured

1 creditors.

2 Now, I've told you about Thielert AG at 10
3 million. And Thielert AE at 12 to 15 million.
4 Let's call it 15 for sake of argument. That's
5 \$25 million in debt. Our trade debt is about
6 \$1.2 million. Our list of top 20 creditors drops
7 down to 20 creditors at \$16,000. I think we have
8 three or four creditors over \$100,000.

9 Now, we also have executory supply contracts
10 which haven't been rejected, so that number will
11 go up. We also may have warranty claims comes
12 in, so that may go up, but as you can see from
13 the dynamics of this case, you've got over 95
14 percent of this debt to these two entities.

15 You also, if you kind of move the numbers
16 around and make some assumptions, you've got a
17 potential pay-out of somewhere around \$.30 on the
18 dollar, but the numbers don't move around with
19 contingent claims and other contingencies. So,
20 that's why we're asking for things to be
21 expedited.

22 And with that as background, we have a motion
23 for approval of a bidding procedure by which
24 qualified bidders will bid, we're asking for a
25 deadline of February 19th for qualified bids. The

1 bidder must put up \$350,000 in cash.

2 The bidder must exceed the Textron bid. The
3 Textron bid we view as \$11.5 million subject to
4 inventory adjustments. Obviously, if inventory
5 is reduced, that price is reduced. But 11.5
6 subject to adjustments. Any other bidder has to
7 come in and do an overbid of \$500,000 and also
8 cover a breakup fee of \$350,000.

9 Now, we're asking for the breakup fee of
10 \$350,000 based upon the fact is that we have
11 affidavits and representations from Textron, they
12 have already spent over \$400,000 in this process.
13 And what has happened is, last June the corporate
14 finance partners, the investment bankers running
15 this sales process, as early as then, they were
16 talking to Textron. There's a considerable
17 amount of due diligence when you're going under
18 these PMAs to look at how good the engineering is
19 behind it to determine whether or not they have
20 value or not. And there's a couple of thousand
21 of those PMAs, I believe, if I'm not mistaken.

22 There's a considerable amount of due
23 diligence because we're in the aviation industry
24 with a considerable amount of risk, as you might
25 imagine, attached to it.

1 We've reached an informal understanding with
2 Textron in early December, and it took from early
3 December to December 30th to reduce that to a
4 written Asset Purchase Agreement with about 20
5 schedules which took hundreds of man hours to put
6 this together. So, Textron, when we're asked for
7 the breakup fee, is actually less coming into
8 this courtroom today than their expenditures.

9 Also, we believe that by giving qualified
10 bidders all of the information on those
11 schedules, they will have a big jump and a big
12 cost savings on their due diligence. It would be
13 like taking information from another law firm,
14 you might have to look at it yourself but at
15 least you have information put together for you
16 and a structure of a deal put together for you
17 ahead of time. There have been no objections to
18 the breakup fee. I will let Mr. Leonard or
19 Ms. Ruckman explain the agreement on the cash
20 purchase price, the bidding procedures. Let me
21 restate that.

22 The bidding procedures say the bid has to be
23 cash. The objection was there should be more
24 flexibility. They have worked out language. The
25 Debtors' obligation under the Asset Purchase

1 Agreement are it's up to Textron to approve that
2 agreement or Textron can back out of the deal.

3 So, rather than me trying to paraphrase what they
4 have agreed to, I'll leave that up to them.

5 I will tell you as part of this bid
6 procedure, they're asking for bids on February
7 19th. This is a sell hearing on February 24th.
8 We propose to conduct an auction the morning of
9 February 24th, go to Court on the afternoon of
10 February 24th if they're qualified bidders.
11 Those are the keys dates.

12 THE COURT: Where are you going to do
13 your auction, your law firm?

14 MR. ROBERTS: We're going to do it our
15 office across the street from the courthouse at 9
16 o'clock on the 24th, and Judge Houser set a
17 hearing at 3 or 3:15 that afternoon on the sale.
18 And what we're asking for today is that the bid
19 procedures have the same date and time.

20 I want to also focus a little bit on notice
21 for the Court so you know what we're doing, and
22 that will get into our post-petition financing.

23 We sell primarily to distributors, not to
24 end-users, so there may be a couple hundred
25 thousand people flying around in airplanes that

1 have our parts that we don't know about, or they
2 may be flying in airplanes that have parts that
3 they don't know about, and so, obviously, because
4 this is a proposed sale free and clear of liens,
5 claims and encumbrances, and barring any claims
6 against the successor -- the purchaser as a
7 successor in interest, this is the notice that we
8 have agreed to give and we're going to give.

9 First of all, we have our mailing matrix, the
10 typical all creditors we know about.

11 We also have a list of every customer we've
12 done work with in the last five years. They've
13 received notice of this hearing.

14 We have every vendor we've done business with
15 in the last five years. They've received notice
16 of the hearing.

17 Those three groups will get notice of the
18 whole procedure.

19 In addition, the FFA web site has all
20 registered engine owners -- or plane owners by,
21 as I understand, tail number on its web site, and
22 we have agreed to go to that web site, pull down
23 the mailing list and give written notice to
24 perhaps a little over-statement but not much, to
25 every owner of a piston-fired aircraft in the

1 United States, about 200,000. That comes at
2 considerable expense.

3 We have -- if I may, Your Honor, give you a
4 set of exhibits.

5 THE COURT: Now, I have a set that was
6 delivered earlier.

7 MR. ROBERTS: We have also three
8 proposed notices by publication if you'd turn to
9 Tab No. 9. Tab No. 9 is the first notice we're
10 asking for approval of.

11 Now, this magazine that we've asked for this
12 one I believe it's EA Sports Aviation, their
13 deadline for publication for February was
14 yesterday, so we have sent this to the publisher,
15 and our firm has used our credit card to pay the
16 several thousand dollar full-page ad, so this
17 notice is unique in that we can't tell them the
18 deadlines because we don't know what they are;
19 however, we have set up an extra net where all
20 this information is available. So, we've steered
21 them to the Court for some information or extra
22 net where they can contact my secretary, and
23 she's very grateful that I've done this to her.

24 THE COURT: I'm sure she is.

25 MR. ROBERTS: And we give them notice,

1 that if you're a creditor -- we tell them who
2 Superior is, what we sell. We tell them what the
3 effect of the auction is, we tell them what the
4 proposed purchase price is, and we also have told
5 them that we've asked for a bar date for filing
6 proofs of claims for February 21st. I'll go back
7 to the request for the bar dates in a moment.

8 The second proposed notice would go in to
9 other publications. It's the same as the first.
10 It's under Tab 10, except here, since we don't
11 have to do it until we have dates, we'll be able
12 to actually put dates in the notice.

13 All right. This is not testimony, but I
14 believe the magazine we just advertised in has a
15 circulation of over a million people. I don't
16 know what the circulation of the others is but
17 they're the ones selected by Textron who, of
18 course, has interest in making sure, as we do,
19 that due process is given to parties to the
20 extent possible.

21 The third notice under Tab 11 is a what I
22 call a "far more elaborate version" of the first
23 two. It's got dates, it doesn't refer you back
24 to -- it's more self-contained instead of
25 referring you to information on a web site.

1 That's what we would propose to send out to the
2 FFA registered owners. As well, I believe this
3 is what we would be sending out to our mailing
4 list as well.

5 So, my purpose in goinb through that in
6 detail is to show the Court the Notice we're
7 asking you to approve and also to show the Court
8 we're taking extraordinary efforts to notify
9 anyone that may be affected by this process.

10 Now, there's a cost to that, and the lawyers
11 in their infinite wisdom and with the help of
12 some operations people estimated that cost may be
13 as much as \$150,000 based on the first bid I've
14 got, we may be a little conservative on that, but
15 we're not sure we're going to have the 350,000,
16 so another motion we filed today is the Motion
17 for Post-Petition Financing. And that financing
18 is really pretty straightforward.

19 Textron is paying us \$350,000 down on the
20 contract. Textron will allow us to spend that
21 money on the third-party expenses for that
22 Notice. If they're the approved seller, it
23 basically comes out of the purchase price; if
24 they're not, they have a super priority unsecured
25 administrative claim, and there's no interest on

1 it. It's basically they're fronting us the money
2 to do the Notice, and that's the financing we're
3 asking for, and you will hear testimony that
4 frankly, we haven't gone out to banks to try and
5 get better financing than no-interest financing.
6 I think the Court can probably take judicial
7 notice that that's extraordinary and unusual.

8 We are also asking to set the bar date for
9 proofs of claims. Since we're sending this
10 Notice out as I've explained, I think we're in a
11 position to give parties notice. Our concern is
12 we're going to be filing a plan in short order
13 that contemplates that the distributions from the
14 sale will be paid to creditors in accordance with
15 their priorities.

16 We have about \$75,000 in priority employee
17 claims, have about 150,000 estate claims, and the
18 rest appears to be unsecured claims. We don't
19 want to wait around consuming our cash operating
20 instead of paying it out to the unsecured
21 creditors.

22 So, since the sale process is moving toward
23 the end of February, it's our intention to file a
24 plan very soon that can follow up soon after that
25 sale procedure and make distributions to

1 creditors so we can shut the costs of this case
2 down and so that we can distribute money to
3 creditors, and we have to that end, I believe
4 I've stated it earlier, but we've asked for a bar
5 date for filing proofs of claims for February
6 21st. The reason why we asked for that date is
7 if we know what the proof of claims are, we're
8 looking at competing bids. When we're coming to
9 Court, we will know and have some idea what the
10 universe of the claims are, what the universe of
11 the issues are and how that might impact the
12 sale. So, we're asking for the bar dates to be
13 shortened.

14 We have two other motions. As I have
15 previously advised the Court, we laid off -- we
16 had 35 employees, now we're down to 15. We laid
17 off 20. Those 20 were paid their payroll through
18 the date of termination which was a date with
19 filing.

20 One thing that just came to my attention we
21 haven't asked in our motion. I'm going to ask
22 the Court to consider approving is the payroll
23 taxes would normally be paid a week later. They
24 were not paid. So, the payroll taxes of that
25 payroll need to be paid. When I find my notes, I

1 can give the Court how much that is, but we would
2 ask the Court to allow us as part of this relief
3 I'm going to be asking for to also be able to pay
4 the payroll taxes that are related to that last
5 payroll for all of the employees, both the
6 terminated and the retained employees.

7 We are also asking for permission to pay some
8 pre-petition wages, salary and employee benefits.
9 Now, the only pre-petition wages we have are for
10 the retained employees because there's a gap of
11 three or four days that they weren't paid for.
12 Now, these employees are critical to us. We have
13 engineers and experts of various types and people
14 just have a lot of key information in their head.
15 And we're going to be asking for severance for
16 them by a separate motion, but under this motion
17 we certainly want to catch them up on their
18 pre-petition -- our pre-petition payroll
19 obligation which would be a priority claim in any
20 event.

21 The Debtor also has certain benefits it's
22 asking to continue, and one example is a
23 cafeteria plan. The Court may be familiar with
24 how they operate, but these employees have been
25 at the beginning of the year they choose to have

1 the company withhold, say, \$2,000 and which is
2 withheld all of their paychecks all the way
3 through the year through December 31, and then
4 when they incur a medical bill, they submit that
5 bill to the company for reimbursement -- well,
6 the company pays the medical bill so it is
7 tax-free to the employee. If the employee
8 doesn't use the money, it's lost. So, the
9 employees have paid all their money in. They
10 have until February 28th to submit their medical
11 expenses. We're asking the Court to allow us to
12 honor those obligations. Again, I think that
13 would be part of a priority claim perhaps since
14 it went over a year instead of six months,
15 perhaps not, but again, we're talking about 35
16 total employees, we're talking about 15 critical
17 employees.

18 We also provide health insurance and we also
19 provided 401(k) matching which has straddled the
20 filing period.

21 So, we're asking and we think in the scheme
22 of this case it's a fairly immaterial amount of
23 money, and we think it is pretty much governed by
24 priority claims or necessity of keeping key
25 employees.

1 In these motions there's only one insider
2 among all these employees, and that's
3 Mr. Ambergcrombie who is a President and a
4 Director. We're going to ask for -- we're also
5 asking the Court to honor the vacation policy
6 that we have.

7 In addition to that, for the 15 key
8 employees, by separate motion, we are asking to
9 give them severance equal to one month's of
10 wages. That total would be \$7,855. The accrued
11 vacation costs would be about \$65,000, so all
12 we're asking to retain our employees is allow us
13 to pay them or allow them to take their paid
14 vacation which is more likely and allow us to pay
15 them one month's salary as severance provided
16 they stay as long as we need them and they're not
17 terminated for cause.

18 Under the Bankruptcy Code there are
19 limitations, as the Court knows, on severance for
20 insiders, and the severance for Mr. Ambergcrombie
21 would be \$1,000 if you looked at the exhibit to
22 -- Exhibit A to our Motion for -- excuse me.
23 The exhibit's actually attached to our Motion to
24 Pay Pre-Petition Employees. That would show the
25 severance. It shows that the severance for the

1 insiders is within the parameters of severance to
2 insiders under the Bankruptcy Code. The Code
3 Section has escaped me, but my recollection is
4 it's ten times the median of a company-wide
5 severance program in the calendar year. Calendar
6 year 2009, Mr. Ambergcrombie is certainly well
7 within the percentage of the median. He's not
8 getting any special treatment because he's an
9 insider.

10 THE COURT: My Trustee law clerk looked
11 it up yesterday, and we agree with you.

12 MR. ROBERTS: I'm sorry, Judge, I have
13 the Code Section in my notes, and I'm not finding
14 it at the moment.

15 THE COURT: That's okay. That's all
16 right.

17 MR. ROBERTS: So, that's a whole lot of
18 background, but we're asking for several types of
19 relief here today. The witness we have is
20 Mr. Kent Ambergcrombie. It is my practice when we
21 first appear in a bankruptcy court at the
22 beginning of a case to put a witness on live for
23 direct examination for the benefit of the Court.
24 We have a rather unique situation, and I
25 understand you're hearing this case for Judge

1 Houser, I don't know if you're keeping this case
2 or Judge Houser is keeping the case --

3 THE COURT: She'll keep it.

4 MR. ROBERTS: -- so I don't want to
5 waste the Court's time by giving you a lot of
6 background. I could proffer the testimony as
7 well.

8 THE COURT: I think under our rules,
9 we're going to need to put on a little bit of
10 testimony on the breakup fee for sure.

11 MR. ROBERTS: Okay. Your Honor, I would
12 also at this time, I would ask for the Court, I
13 would ask to admit all of our exhibits. I will
14 point out to the Court that two of our exhibits,
15 Exhibits 7 and 8 are Affidavits. One's an
16 Affidavit of Daniel Shank of Corporate Finance
17 Partners who led these sales efforts. Mr. Shank
18 is in the Dominican Republic and he has been ill
19 for about four weeks, about the time we were
20 getting down to signing this deal. It's
21 difficult for him to be here.

22 In Paragraph 8 we also have -- and what he
23 is doing is describing the Debtor's sales efforts
24 to basically back up what I have explained to the
25 Court is this is not the beginning of the sales

1 procedure, it is the end of the sales procedure.
2 After Mr. Ambergcrombie will testify, I could take
3 you through some of that, but for the purposes of
4 admissibility, I'd like to point that Affidavit
5 out to you. And the other Affidavit is the
6 Affidavit of Avco and Textron as to their costs
7 incurred to-date in terms of attorneys' fees and
8 internal costs.

9 Now, these witnesses are not in the courtroom
10 and not available for cross-examination. We'd
11 ask the Court to consider them under Federal Rule
12 43(c) which allows the use of affidavits in the
13 discretion of the Court in motion practice in
14 Federal Courts and ask for the Court to
15 incorporate Federal Rule 43(c) under its power in
16 contested matters under Rule 9014. I don't
17 believe there's any objections to that request
18 given the nature of these affidavits.

19 THE COURT: Does anybody object to our
20 using these affidavits given that
21 Mr. Ambergcrombie is also going to testify? All
22 right.

23 MR. LEONARD: Your Honor, I don't have
24 an objection for the use of those affidavits for
25 today's motions. I think Mr. Shanks also --

1 there's an application employing him, and there
2 may indeed be questions we have we'd like to ask
3 him that are different than what's in that
4 Affidavit, but I don't want that to be used in a
5 subsequent hearing just because we've allowed
6 them to be admitted. I think it's appropriate
7 for what Mr. Roberts going to admit it to show
8 that we're at the end of the process, same with
9 the Affidavits supporting them, the breakup. I
10 don't have a problem with those additions as to
11 how the breakup is constituted, but not as to any
12 of the other factual statements in those
13 Affidavits.

14 THE COURT: Any problem with that --

15 MR. ROBERTS: No problem with that at
16 all. We'd introduce them for the purposes of
17 this hearing only.

18 THE COURT: Okay. This morning only
19 then, Mr. Leonard.

20 MR. LEONARD: Thank you.

21 MR. ROBERTS: Okay, Your Honor, before
22 putting on Mr. Ambergcrombie, since the exhibits
23 are admitted, I would direct you first for the
24 purpose of the breakup fee, to the Affidavits
25 under Tab 8.

1 THE COURT: Let me say for the record,
2 1-11 are admitted. All right. & you say?
3 (Exhibits 1 through 11 identified, offered and
4 admitted.)

5 MR. ROBERTS: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. ROBERTS: Rather than reading the
8 entire thing for you, this is the Affidavit of
9 Vice President Deputy General Counsel of Textron.
10 Now, Avco Corporation is the purchaser. It was
11 designated to be the purchaser and put in the
12 a/b/a, but Textron was involved for a great
13 period of time in the negotiations, so we have
14 affidavits from both Textron and Avco as to their
15 costs, and they go through and explain how they
16 have been involved in talking to Corporate
17 Finance Partners since the Spring of 2008. They
18 describe their due diligence, including preparing
19 various internal business models, attacking (sic)
20 substantial business and legal due diligence,
21 that they, for example, in Paragraph 5 in July
22 2008, they brought 12 of their employees to
23 Coppell, Texas for a management presentation.

24 We have a virtual data room that was opened
25 up which they have gone through. They spent four

1 months using themselves and independent
2 consultants to evaluate the sufficiency of the
3 intellectual property and tangible embodiments
4 thereof and engineering data.

5 Then we also had substantial negotiations
6 over nonbinding letters of credit -- letters of
7 intent which were actually never signed. We
8 decided rather than to go to nonbinding letter of
9 intent, we'd go to a binding contract.

10 Then you have the negotiations for the Asset
11 Purchase Agreement which is in the evidence and
12 which is offering the highest and best price
13 to-date.

14 Starting with Exhibit 11, they refer to their
15 fees and costs and point out they spent \$231,000
16 in outside legal fees as of December 31 and
17 internal costs, internal labor costs of 47,000,
18 and then you've also got what appear to me to be
19 out-of-pocket expenses of 24,000. That is just
20 Textron, and they have exhibits attached to there
21 showing their legal costs, break down of their
22 labor costs, and their actual costs incurred as
23 exhibits to that first Affidavit.

24 The second Affidavit in Tab 9 basically
25 echoes the first Affidavit on behalf of Avco, and

1 again, you have an Exhibit A breaking down costs.
2 And you will see -- did we get it backwards?
3 No, that's right. You'll see their showing costs
4 under Exhibit A of \$122,000 in out-of-pocket
5 costs, \$87,000 in labor costs, 24,000 in expense,
6 an additional \$364 hours employees. Now, I'm sure
7 Ms. Ruckman who represents them can add all those
8 numbers up, but they're over \$400,000, so we have
9 someone that spent that time and effort to come
10 in and give us an opportunity to sell at 11.5
11 million and also to give us the opportunity to
12 obtain higher bidders, and if they lose in this
13 auction, they recoup less than the resources they
14 have expended. I believe based upon the sale of
15 11.5 and the \$350,000 breakup fee, we're
16 somewhere around 3 percent. So, that is our
17 evidence to support the breakup fee.

18 THE COURT: Thank you.

19 MR. ROBERTS: I'm ready to proceed with
20 Mr. Ambergcrombie. I haven't given anybody else
21 to talk.

22 THE COURT: Let's hear if anyone else
23 wants to make brief opening statement, and then
24 we can put Mr. Ambergcrombie on. Anybody else
25 want to be heard?

1 MS. RUCKMAN: Your Honor, Mr. Stephens
2 has raised a couple of the issues. I think it
3 might be more appropriate for him to go ahead and
4 just put his witness on and then if we could take
5 up a couple of questions that he had addressed to
6 Textron to speak to the Court about and to the
7 Air Parts objector. That makes sense to me so
8 --

9 THE COURT: Okay.

10 MS. DURHAM: Good morning, Your Honor.
11 Mary Frances Durham for the U.S. Trustee, and the
12 U.S. Trustee really has two very small but
13 probably annoying comments regarding all of these
14 matters, and one goes to the Motion to Pay the
15 Pre-Petition wages, salary, employee benefits.
16 Mr. Ambergcrombie who will be testifying is the
17 only person over the \$10,950 limit, and so the
18 U.S. Trustee would object to the payments over
19 that amount. Everyone else it seems when you add
20 up all of the different kinds of wages and
21 benefits they want to pay them fall within that
22 limit.

23 The other one is on the Proof of Claim
24 limitation. I just don't know how that's done
25 under Rule 9006(c). There's no reduction in

1 filing in the time. Now, maybe the Court's
2 probably had this more often, and under I think
3 it's 3002, the time for filing a Proof of Claim
4 is 90 days after the 341 which puts it at the end
5 of April, and of course, the Government agencies
6 have --

7 THE COURT: Even longer.

8 MS. DURHAM: -- but I just throw those
9 out.

10 THE COURT: Uh-huh. When is the --
11 did you say when the 341 is set?

12 MS. DURHAM: It's like -- I believe
13 it's January 30th. It's at the end of this
14 month.

15 MS. DURHAM: The 29th.

16 THE COURT: Yeah, thank you. Those
17 weren't too annoying.

18 Mr. Roberts, you may call your first witness.

19 MR. ROBERTS: Yes, sir. Your Honor,
20 we'd call Mr. Kent Ambergcrombie.

21 THE COURT: Mr. Ambergcrombie, it's over
22 here, sir. Would you raise your right hand, sir.

23 (Witness duly sworn by the Court.)

24 You may proceed.

25

1 KENT AMBERCROMBIE,
2 Having been duly sworn by the Court to tell the
3 truth, the whole truth and nothing but the truth,
4 testified under oath as follows:

5 DIRECT EXAMINATION

6 | BY MR. ROBERTS:

7 Q. Mr. Ambergcrombie, you are the
8 President of Superior Air Parts, the Debtor?

9 | A. Yes, sir.

10 Q. And you are also one of three members
11 of the Board of Directors?

12 A. Yes, sir.

13 Q. Could you briefly describe for us your
14 business background.

15 A. I attended the University of North
16 Texas and graduated from there in 1992 with a BA
17 in Finance, Administration of Finance degree.

18 I joined a company called Avial (phonetically
19 spelled) which is in the aviation parts
20 distribution business, began there in core
21 processing and warranty processing. I moved into
22 the accounting area and worked within the
23 accounting and finance departments for various
24 divisions within Avial, their domestic
25 distribution line as well as a smaller division

1 of their aerospace hardware. That division was
2 sold off to a private firm.

3 I went to work there as Director of Just In
4 Time Management (phonetic spelling) contracts
5 which was inventory management processing with
6 customers such as McDonald Douglas, Bell
7 Helicopter and others.

8 That company went public and then was
9 acquired by Honeywell. I moved back into
10 accounting at that point in time to assist with
11 the transition of the activities of the company
12 from Tri-Star into Honeywell. The opportunity
13 came up to join Superior Air Parts in December of
14 2000 where I joined Superior Parts as Director of
15 Finance and Accounting in December of 2000. I
16 have worked there ever since.

17 In 2006 I was brought into the VP of Finance
18 in accounting and in the middle of 2006 took on
19 the operational aspects, including purchasing and
20 warehouse operations.

21 In January of 2007 I was promoted to the
22 office of President of Superior Air Parts, and
23 everything in that sense.

24 Q. Thank you. Would you briefly describe
25 to the Court what Superior is. How long has it

1 been in business, what it does and how it fits
2 into its market.

3 A. Superior Air Parts is a company that's
4 been in existence since 1967 and operates under a
5 section of the FFA Code referred to as Parts
6 Manufacturer Approval that allows us to
7 manufacture replacement components for Textron
8 and Textron (unintelligible at 10:34:03) and
9 Teledyne Continental Motors varying engines
10 within the piston-engine aviation market.

11 We've been in business since 1967 and have
12 grown our product line since through the efforts
13 of achieving additional PMAs. We also began our
14 own branded engine program in the early 2000s for
15 a segment of the market called "experimental
16 aviation" but also into the certified engine
17 markets for original in-manufacturing of air
18 frames.

19 The company has been privately held for most
20 of its existence but was acquired by Thielert AG
21 in March of 2006.

22 Q. Now, you heard me in my opening
23 statement state that Thielert AG acquired the
24 company for -- the stock for \$1 and paid \$10
25 million and bought the senior and subordinated

1 debt and stepped in their shoes. Did you hear me
2 say that?

3 A. Yes.

4 Q. Is that an accurate statement?

5 A. Yes, sir.

6 Q. You also may heard me in my opening
7 statement talk about the performance and
8 consistent with your schedules that on \$30.1
9 million of sales in 2007, the company suffered
10 losses of 5.6 million, and on 22.4 million
11 dollars of sales in November of 2008, it lost
12 \$4.7 million. Do you agree with those numbers?

13 A. Yes.

14 Q. In fact, you signed schedules,
15 Statements of Affairs attesting to those numbers,
16 right?

17 A. Yes.

18 Q. Why is this company losing money?

19 A. There are numerous factors involved in
20 the financial distress the company's found itself
21 in, some dating back into the late '90s,
22 including decisions made at those times that
23 fostered more competitive forces in the market
24 that resulted in some degradation of margins.

25 September 11th, 2001, as everybody is well aware,

1 had a very significant impact on general
2 aviation. At the same time that was happening,
3 the company sold off one of its revenue streams
4 to a company called "Aeorspace Products
5 International." Just prior to September 11th,
6 the company relinquished the rights to that
7 revenue stream. September 11th then impacted the
8 general aviation markets significantly causing
9 then some additional distress to the company, and
10 that coincided with product liability insurance
11 premiums almost quadrupling over the couple of
12 years within the industry as well causing an
13 expense impacted the company, and unfortunately,
14 the company exhausted its cash reserves, spent
15 the cash associated with its revolver and became
16 significantly financially distressed in late 2005
17 which necessitated the desire of the owners at
18 the time to sell the company.

19 Q. The fact that 2005 there were several
20 forbearance agreements entered into with the then
21 existing bank, correct?

22 A. Yes. The company bank defaulting on
23 several loan covenants in 2005.

24 Q. Other than an accounting of profit in
25 2006 related to the forgiveness of debt in the

1 2006 transaction, has this company made a profit
2 in the last five years?

3 A. No.

4 Q. Now, also Thielert AG is 100 percent
5 shareholder?

6 A. Yes.

7 Q. And it filed a German insolvency
8 proceeding in March?

9 A. I believe that's correct.

10 Q. And Thielert Aircraft Engines is a
11 sister company based in Germany?

12 A. Yes.

13 Q. And what do they do?

14 A. Thielert Aircraft Engines primarily is
15 a diesel engine manufacturer for the general
16 aviation market. The relationship with Superior
17 is based upon their machining operations where
18 they do manufacture certain components of
19 Superior Air Parts, a critical component such as
20 our crankshaft, camshaft connecting rods and
21 solenoids (spelling?)

22 Q. And what's the basis of their claims?
23 I understand the claim's somewhere around 15
24 million but there may be an account receivable of
25 how much offsetting that?

1 A. Roughly two and a half to 3 million.

2 Q. Okay. So, let's say roughly \$12
3 million in net debt. How was that incurred?

4 A. That was incurred through the
5 acquisition of the components that they
6 manufactured under a supplier agreement and the
7 Thielert Aircraft Engines agreed to continue
8 supplying the components to Superior Air Parts
9 knowing that Superior Air Parts could not pay
10 those debts.

11 Q. And Superior, since the acquisition of
12 Thielert, hasn't had any other financing from any
13 other sources?

14 A. The \$2 million loan outstanding to
15 Thielert AG is the only other financing.

16 Q. And Thielert AE Aircraft Engines is
17 also in an insolvency proceeding in Germany as
18 well, right?

19 A. Yes, sir.

20 Q. And is Thielert AE willing to continue
21 to provide this quantity of parts and credit for
22 the indefinite future to continue operating?

23 A. Once they file for insolvency
24 proceedings, we began paying for all components
25 received from Thielert Aircraft.

1 Q. So, essentially, your financing source
2 dried up?

3 A. Yes.

4 Q. Now, Mr. Ambergcrombie, the efforts to
5 sell this company were led by Mr. Daniel Shank
6 (phonetically spelled), CFP Midcap (phonetically
7 spelled), an investment group of Germany,
8 correct?

9 A. Yes, sir.

10 Q. You had some involvement in the
11 process, but it was primarily led by him
12 answering to the Board of Directors, correct?

13 A. Yes, sir.

14 Q. Okay. You may have also heard me
15 refer to an Affidavit where Textron had I believe
16 13, 15 people come meet at a management meeting
17 this summer. Were you in that meeting?

18 A. Yes, sir.

19 Q. So, are you also aware of what --
20 can you describe what due diligence you know of
21 that Textron went through in order to reach the
22 Asset Purchase Agreement?

23 A. I'm specifically aware of the
24 management meetings that were incurred and
25 requests made for documentation and the access

1 granted to them for the data room activities, so
2 I'm aware of those.

3 Q. Now, you also assisted us when we put
4 together schedules of PMA's tooling locations,
5 vendors for the last five years, customers, and
6 all the schedules attached to the APA, you were
7 involved in that as well, correct?

8 A. Yes, sir.

9 Q. And would you agree that took a
10 substantial amount of our time?

11 A. Yes, sir.

12 Q. And the negotiations with the APA took
13 over three weeks during the month of December,
14 did it not?

15 A. Yes, sir.

16 Q. And you incurred substantial
17 attorneys' fees in doing our side of
18 negotiations, correct?

19 A. Yes.

20 Q. And it appears like we had fewer
21 lawyers on it than they did.

22 A. A few.

23 Q. But they did a whole lot more writing.
24 In Mr. Shank's Affidavit, he testifies that he
25 contacted 76 petition inquirers, that 11 calls

1 them "investors" parties inquiring, that on
2 behalf of Superior he entered into 11
3 confidentiality agreements so people could
4 receive a due diligence starting in the Spring or
5 Summer of 2008 and that there were four
6 nonbinding offers received and there were
7 substantial negotiations with two to three
8 parties.

9 A. Yes.

10 Q. Do you have any information that
11 contradicts that representation with you today?

12 A. No, sir.

13 Q. For the purpose of disclosure, you
14 were a part of a group that also wanted to
15 acquire this company, correct?

16 A. Yes, sir.

17 Q. In fact, I've forgotten the name of
18 your client. Mr. Leonard?

19 MR. LEONARD: Aviation Parts Supply.

20 Q. Okay. Aviation Parts Supply. Were
21 you at one point involved with a group called
22 "Aviation Parts Supply" trying to make proposals
23 to this company?

24 A. Yes, sir.

25 Q. At the same time you served as

1 President, correct?

2 A. Yes, sir.

3 Q. And did the company instill some
4 protections to protect you from information from
5 any allegations that you may be operating under a
6 conflict of interest?

7 A. Yes, sir.

8 Q. And, in fact, you didn't even know
9 what the Textron offer was for some time after it
10 was made?

11 A. That is correct.

12 Q. And even after you knew it was made,
13 you did not disclose that Textron offer to
14 anybody, did you?

15 A. That is correct.

16 Q. As you sit here today in your
17 fiduciary capacity as an officer and director
18 looking at how to get the most money for
19 creditors, is the Textron offer the highest and
20 best binding offer that we've received?

21 A. Yes, it is.

22 Q. Let's talk about your employees a
23 minute. Is it true before the filing you had
24 about 35 employees? Did I get that right?

25 A. 31 right before the filing.

1 Q. Well, a month before the filing, how
2 many did you have?

3 A. 41.

4 Q. And now you have approximately 15 key
5 employees, including yourself?

6 A. Correct.

7 Q. And to reach those key employees, did
8 you identify the people you thought would be
9 necessary to protect the assets and to help
10 complete and consummate any sale transaction and
11 to assist in any due diligence efforts?

12 A. Key employees identified for those
13 reasons, as well as our obligation to the FAA to
14 maintain our production certificates and
15 operations.

16 Q. And along those lines, let me digress
17 a minute. If a party complains of a part being
18 defective and notifies you of that, do you have
19 some continuing obligation to do some kind of
20 inquiry or investigation into that part?

21 A. Yes, we're still required to report to
22 the FAA any part failings under FAA Part 21(3)
23 and we have an obligation to analyze, inspect and
24 investigate any such claim.

25 Q. In fact, even this week you had a

1 mechanic advise you of a -- had advised you of
2 a failure of a customer's airplane and you did a
3 determination, your staff did and it appeared
4 that the engine had run out of oil.

5 A. Yes.

6 Q. That would be an example of your
7 obligation to report back of any product failure?

8 A. Yes, sir.

9 Q. Thank you. And that obligation is
10 continuing, is it not?

11 A. Yes, sir.

12 Q. You also have a IT person on staff, or
13 general contractor?

14 A. On staff.

15 Q. You also have people that have a lot
16 of the information, for example, the PMAs and the
17 background in their head?

18 A. Yes, we have several staff in the
19 engineering in qualities area.

20 Q. And what would be the impact on the
21 ability of us to have a successful sale and
22 distribution to creditors if these key employees
23 left?

24 A. It would be very difficult to
25 consummate this -- any sale without certain

1 employees within the positions that we've
2 identified.

3 Q. I noticed you had a couple of
4 warehouse clerks on there. Where would they be
5 critical?

6 A. The warehouse clerks know where the
7 parts are, maintaining any type level of sales
8 and conduct any type of inventory, their
9 knowledge would be necessary to make any type of
10 transition easier.

11 Q. In fact, the sale we have contemplated
12 with Textron requires an analysis of inventory
13 after the sale is approve to compare with the
14 beginning inventory, correct?

15 A. Yes, sir.

16 Q. So, in fact, they may be some of the
17 most critical employees?

18 A. Yes, sir.

19 Q. All right. You're included as a
20 critical employee?

21 A. Yes.

22 Q. How did you arrive at our request of
23 essentially honoring vacation benefits and then
24 for the retained employees, paying them one
25 month's severance, how did you arrive at that in

1 trying to determine what it would take to retain
2 those employees?

3 A. The company's policy has always been
4 to honor any vacation approved. Without that,
5 since some of the employees had some significant
6 amounts of time accrued, any loss in that
7 approved vacation benefit would give them reason
8 to consider discontinuing their relationship with
9 Superior Air Parts, and also we felt the
10 severance, while modest, was necessary to try to
11 encourage individuals to maintain their
12 employment through any type of transition.

13 Q. One other obligation you have in
14 closing, at least with Textron, and you can
15 expect with others is to do tagging of parts?

16 A. 8130 tagging.

17 Q. What's 8130 tagging?

18 A. 8130 tag is an FAA document that can
19 be filled out by FAA-approved individuals. We
20 have one within our company that authorizes the
21 shipment of those goods internationally, and for
22 critical components, it's required for the
23 shipments of serial number critical components
24 such as crankshafts and cylinders.

25 Q. And you have one particular employee

1 that you believe would be critical for that
2 process?

3 A. Yes.

4 Q. Why is one particular person critical?

5 A. They have the only designee from the
6 FAA.

7 Q. So, they have to be a designated FAA
8 person?

9 A. Yes, they have to be approved by the
10 FAA.

11 Q. Now, if that person quit, you could go
12 find somebody with that designation, right?

13 A. Yes, you can get contractors.

14 Q. And would you expect it to cost more
15 than it's costing your employee even given it may
16 take giving an extra month's vacation to get a
17 third party?

18 A. Significantly.

19 Q. Do you have -- let me give you a set
20 of exhibits.

21 MR. ROBERTS: Your Honor, do you have
22 a set?

23 THE COURT: I have one.

24 MR. ROBERTS: Does the Court need
25 another one.

1 THE COURT: You might give one to my
2 law clerk, Mr. Roberts.

3 MR. ROBERTS: Okay.

4 Q. (By Mr. Roberts) Mr. Ambergcrombie, I
5 would like you to turn to Number 5, the Debtor's
6 Cash Flow Projections.

7 Now, these are projections you put together
8 yesterday in preparation for today's hearing; is
9 that right?

10 A. Yes, sir.

11 Q. What is Week 2? What -- on the
12 calendar, what week are we talking about?

13 A. That's this week.

14 Q. So, you're starting with this week and
15 you're doing forecasts going forward, correct?

16 A. Yes, sir.

17 Q. Now, if I'm reading this, and I go
18 down and look down "Cash balance in interim
19 period (sic), I will see what cash you have spent
20 through Week 14 and would see that if everything
21 goes as assumed on here, the company would have
22 about \$659,000 in cash, correct?

23 A. That's correct.

24 Q. And that's without paying the \$150,000
25 or so in state property taxes due in January,

1 right?

2 A. I believe that's included in Week 5.

3 Q. Or is that in there? Where is that?

4 A. Week 5.

5 Q. Okay. So, Week 2 -- can you tell me
6 off the top of your head what Week 14 is?

7 A. End of March, I believe.

8 Q. Now, what assumptions -- now, let's
9 go at your cash inflow from customers. What
10 assumptions did you make in reaching this
11 forecast?

12 A. Our existing receivables as of the
13 beginning of this week would be collected at
14 approximately 70 percent.

15 Q. Approximately how much are your
16 receivables?

17 A. Approximately, excluding the two
18 aircraft engines, the portion of the receivable,
19 approximately \$2 million.

20 Q. Do you have any way of knowing having
21 been in a Chapter 11 in this company before what
22 our ability to collect accounts receivable will
23 actually be?

24 A. No, sir.

25 Q. Do you expect some parties to refuse

1 to pay accounts receivables based upon alleged
2 warranty claims?

3 A. Yes, sir.

4 Q. So, I understand that's your best
5 estimate on your collections?

6 A. Yes, sir.

7 Q. You didn't include any sales in this
8 projection, correct?

9 A. Correct.

10 Q. And you actually are making some sales
11 by buyers who still want to buy your parts; is
12 that right?

13 A. Yes.

14 Q. Why wouldn't you include sales in your
15 projection?

16 A. In experience in knowing how long that
17 will continue as we're operating without a
18 warranty and the warranty is a desirable thing to
19 have within the aviation market. We also don't
20 have any significant unforeseen activities or
21 payments to suppliers in here, and we view that
22 as potentially offsetting, some of those
23 unforeseen, and potential supplier activities.

24 Q. You're also aware that creditors under
25 certain circumstances that delivered goods to the

1 Debtor within 20 days of the filing of the
2 ordinary course of business would have a right of
3 reclamation?

4 A. Yes, sir.

5 Q. Excuse me, would have an
6 administrative claim to be paid in full? You
7 understand that?

8 A. Yes, sir.

9 Q. And that's not taking into account in
10 here?

11 A. Correct.

12 Q. You also are aware that creditors who
13 provide goods within 45 days and file a
14 reclamation claim may have a right to reclaim
15 their goods?

16 A. Yes, sir.

17 Q. And you've actually gotten one notice
18 of reclamation, have you not?

19 A. Yes, we received one this month.

20 Q. Any kind of impact from that is not
21 included in this?

22 A. Correct.

23 Q. In Week 10 you have a 477,000-dollar
24 operating expense which is significantly higher
25 than your operating expenses for other months.

1 Why is that?

2 A. That also includes the product
3 liability insurance premium due March 1st.

4 MR. ROBERTS: Your Honor, I'll pass
5 the witness.

6 THE COURT: Does anyone else have any
7 questions for Mr. Ambergcrombie?

8 MS. RUCKMAN: Thank you, Your Honor.
9 Dee Ruckman on behalf of Textron and Avco
10 Corporation. I just have a couple of questions.

11 THE COURT: Okay.

12

13 CROSS-EXAMINATION

14 BY MS. RUCKMAN:

15 Q. Mr. Kent (sic) -- are you or does
16 Superior Air Parts have a current relationship
17 with Aviation Parts Supply, Inc.?

18 A. I'm sorry?

19 Q. Do you currently have any type of
20 relationship with Aviation Parts Supply, Inc.?

21 A. I have not been in direct contact with
22 them and have no financial interest in that
23 organization at this time.

24 Q. So, you have no relationship with them
25 personally?

1 A. Correct.

2 Q. Now, Avco Corporation was in
3 negotiations with the Debtor in connection with
4 this asset purchase. And do you, sir, have a
5 belief as to whether or not Avco Corporation is a
6 viable corporation that will be able to close the
7 Asset Purchase Agreement that it signed?

8 A. I'm not as familiar with the workings
9 of Avco, but their parent company Textron, yes.

10 Q. And Textron Corporation guaranteed all
11 the obligations of Avco Corporation under the
12 Asset Purchase Agreement, correct?

13 A. Yes.

14 Q. So, you believe these entities will be
15 able to perform and close on the Asset Purchase
16 Agreement; is that correct?

17 A. Yes, I do.

18 Q. Now, having this Asset Purchase
19 Agreement completed and having the Schedules
20 done, do you believe that that is helpful and
21 facilitates other bidders in making these bids
22 for these assets?

23 A. Yes.

24 Q. And is there also -- and that is
25 also helpful to the creditors of this estate; is

1 that right?

2 A. Yes.

3 Q. Okay. Thank you.

4 MS. RUCKMAN: I Have no further
5 questions.

6 THE COURT: Thank you. Mr. Leonard,
7 do you have any questions?

8 MR. LEONARD: Just one moment. No,
9 Your Honor.

10 THE COURT: Mr. Roberts, anything else
11 of the witness?

12 MR. ROBERTS: No, Your Honor.

13 THE COURT: You may step down,
14 Mr. Ambergcrombie.

15 MR. ROBERTS: Your Honor, that
16 concludes my presentation of evidence.

17 THE COURT: Let's hear then the
18 stipulation between the parties regarding the
19 objections.

20 MS. RUCKMAN: You want me to give it a
21 try?

22 MR. ROBERTS: Sure.

23 MS. RUCKMAN: Okay. Your Honor, what
24 the parties have stipulated with respect to what
25 constitutes a qualified bid is that a qualified

1 initial bid shall be in the amount of
2 \$12,350,000. That's the 11,500,000-dollar cash
3 bid, plus the 500,000 topping and the 350,000
4 breakup fee, so the initial qualifying bid would
5 be \$12,350,000.

6 Now, of that qualifying bid, only 4 million
7 of the bid need be a cash bid, and the balance
8 can be an assumption of debt that has been
9 released.

10 With respect to that assumption of debt
11 that's been released, the claim that was released
12 actually has to have been a claim; it can't be
13 manufactured claims here, so we'd be thinking in
14 terms of allowed claims, and that there has to be
15 evidence that the claim truly is released. There
16 has to be some written documentation showing that
17 it's released or releases as of closing date.

18 We understand that this type of alternative
19 consideration may be difficult and cumbersome,
20 but from Textron and Avco Corporation's point of
21 view, we're willing to work with this process.

22 THE COURT: Okay. Mr. Leonard, does
23 that state your agreement?

24 MR. LEONARD: Your Honor, Billy
25 Leonard. Ms. Ruckman clearly she did state the

1 agreement.

2 Mr. Roberts, did you indicate what the
3 deadlines we agreed to were? I don't recall.

4 The bids were due Thursday the 19th?

5 THE COURT: The 19th I think was the
6 announcement.

7 MR. ROBERTS: Presently February 19th.

8 MR. LEONARD: And then the auction's
9 on the 24th. And that satisfies our objection,
10 Your Honor.

11 THE COURT: Thank you, Mr. Leonard.

12 Mr. Roberts, anything else? Would you mind
13 before I stop for a minute just to address the
14 two concerns the U.S. Trustee has raised because
15 I think -- I tell you, I have a little issue on
16 the paying of more than the priority claim. I
17 don't think I've ever done that, for one thing.

18 MR. ROBERTS: Your Honor, I would like
19 to address that. You've heard Mr. Ambergcrombie
20 testify. You've heard his experience and
21 background, and he is a key person to keep in
22 place throughout this process. He is our source
23 of all information on this company on top of
24 running the company.

25 The fact that we go slightly over the \$10,000

1 or go over the \$10,000, I would ask the Court to
2 approve for the purposes of retaining him. I,
3 again, don't think it goes over the severance
4 limits to do so. And we have had no objections
5 from any other creditors, even though -- or
6 customers or vendors for the last five years to
7 providing that to Mr. Ambergcrombie.

8 I think the Court can probably tell, he has
9 an outstanding reputation by not drawing any
10 objections in this in time where people are
11 concerned about executive compensation, and I
12 would ask the Court to approve it, not because
13 it's all within the parameters of the priority,
14 but because it's within the parameters of
15 maintaining the most critical employee of this
16 process.

17 THE COURT: And then the U.S. Trustee
18 seemed to object to the fixing of the bar date.

19 MR. ROBERTS: Your Honor, I understand
20 we're asking for a very short bar date.

21 THE COURT: Wouldn't it be about 50
22 days or so, is that about right? Doing that in
23 my head.

24 MR. ROBERTS: Well, we had asked for
25 --

1 THE COURT: Or even less than that
2 maybe. I was trying to look at a calendar at the
3 same time that you were saying the dates.

4 MR. ROBERTS: Yes, Your Honor, I'm
5 going to rather than testify from memory, I'm
6 going to go back and look.

7 THE COURT: Yeah, slightly more than a
8 month, right?

9 MR. ROBERTS: Yes, Your Honor. I --
10 you know, we're trying to move as fast as we can.
11 If the Court has some concerns, we could move it
12 back some. The thing is we're giving notice by
13 publication to people. I think right now the
14 Clerk has set a bar date for last April just
15 automatically, April 29th or something like that.

16 THE COURT: Yeah, and I was looking on
17 that. It's set, you know, with that form that I
18 assume has probably already gone out to the --
19 no, has not been mailed.

20 MR. ROBERTS: Yes, and if you notice,
21 our notice is on the top, saying, notice of bar
22 date for filing of proof of claim, whatever
23 notice is sent, the Court set the date but we're
24 asking for an earlier date. I don't have
25 particular concern one way or another over

1 government entities because we're not going to
2 have to worry about the IRS, and we know what our
3 tax claims are. So, to the extent the U.S.
4 Trustee's concerned about government entities,
5 that's not the concern of -- we're concerned if
6 we wait until the end of April, we're going to be
7 delaying for the purpose of -- not for any
8 purpose, but to end up paying creditors less.

9 THE COURT: Now, are you saying --
10 as I heard you, one of the reasons that you want
11 to know your non-insiders claims is to help you
12 in the auction process; is that right?

13 MR. ROBERTS: Yes, we have a bidder
14 here that's trying to get some flexibility in how
15 to bid, and we have the strange circumstance of
16 having no secured creditors, so you can't do a
17 bid where they can come in and say, "I'm going to
18 buy the lien and do a deal with the secured
19 lender and come in and give you a release of
20 secured lender and pay off all the unsecured
21 creditors."

22 If they're going to go in and buy clients or
23 make deals with particular creditors, the only
24 way I can avoid the absolute priority rule is by
25 making sure there's enough money in the deal to

1 pay the other creditors. And that is our
2 concern.

3 And while they're in Court, they're not the
4 only person has made inquiries to us since this
5 filing about interest. Now, who knows where
6 interest goes, but we have packaged this in a way
7 that others I think have moved quickly to express
8 interest.

9 So that when -- our thinking was when we
10 filed this is, unless we know what that outside
11 number is -- we don't have to know whether
12 they're valid -- we got to know what that
13 outside number is, we may not know how to compare
14 competing offers, and that's why we asked for
15 that.

16 THE COURT: Okay. Mr. Leonard.

17 MR. LEONARD: Your Honor, if I may
18 comment. I think it's to our benefit to have it
19 be heard earlier because we'd love to be able to
20 know what the claims are prior to having to
21 submit an initial qualifying bid under the bid
22 process.

23 THE COURT: So, you're thinking it
24 would help you in the process too; is that right?

25 MR. LEONARD: Certainly. In fact, the

1 bar date as it's being requested now is actually
2 two days after the --

3 MR. ROBERTS: I didn't see the date in
4 there. What date -- I'm sorry. What date was
5 it?

6 MR. LEONARD: The 21st, so that's
7 really --

8 MS. RUCKMAN: The bid's due the 19th.

9 MR. LEONARD: Bid's due the 19th, the
10 bar date's the 21st, so --

11 MR. ROBERTS: I have a paralegal
12 that's outstanding that can put together a claims
13 analysis in short order, but she's not -- can't
14 do it today. I know dates have been moving
15 around. If the Court's inclined to shorten the
16 bar date, our bid deadline's the 19th, we'd
17 really need to have something by the 17th to be
18 able to just add the numbers I think.

19 THE COURT: Okay. Anything else from
20 anybody? We'll be recess for just a few minutes.
21 I'll come back and rule.

22 COURT CLERK: All rise.

23 (Short recess)

24

25

1 (COURT'S RULING)

2 THE COURT: Mr. Roberts, it seems like
3 you've got this case off to a good start. I'm
4 just going to go on my paper docket.

5 The 364(c) Motion is granted. It's
6 very simple, two-age Order, looks to me to be
7 very clear.

8 On the Motion for Order Authorizing
9 the Debtor to Pay Pre-Petition wages, I'm
10 granting it in substantial part to allow
11 Mr. Ambergcrombie the priority amount, but this
12 ruling is without prejudice to reurging the
13 request for the additional amount before Judge
14 Houser.

15 Let me just tell you my thinking on
16 that so you'll understand. When I hear something
17 for another Judge, I'm very reluctant to go out
18 on a limb, but it makes me uncomfortable to begin
19 with, but certainly I think she would rather hear
20 something like that.

21 On the key employee severance that
22 seems to me to be reasonable and fair, granted.

23 On the bid procedures with the
24 agreement that's been reached, that's granted.

25 And the Motion for Order Setting Bar

1 Date is granted except as to governmental
2 entities. Just so you know my thinking on that,
3 my experience, including my employer,
4 governmental entities simply don't work that
5 fast, and they'll never be able to file a Proof
6 of Claim by February is my experience.

7 Anything further?

8 MR. LEONARD: Sir, what date is the
9 bar date?

10 THE COURT: It's the one that was
11 requested in Motion.

12 MR. ROBERTS: Well, could we --

13 THE COURT: If you want to move it up
14 a day or so?

15 MR. ROBERTS: Yes, if we could move it
16 to the 17th.

17 THE COURT: That'd be fine, yeah, 17th
18 would be fine.

19 MR. LEONARD: Thank you, Your Honor.

20 THE COURT: Yeah, thank you for
21 bringing it to my attention.

22 MR. ROBERTS: We'll submit the Orders
23 with revision.

24 THE COURT: Yeah, if you would, since I
25 heard this, you can just -- you going to get it

P-R-O-C-E-E-D-I-N-G-S

1 done today you think, the Order?

2 MR. ROBERTS: Yes.

3 THE COURT: Okay. If you could just
4 get them to route them to me, I'll sign them and
5 give them back to you this afternoon, all right?

6 MR. ROBERTS: Would you like them
7 uploaded?

8 THE COURT: They need to be uploaded.

9 They'll automatically come to Judge Houser
10 because they're a Houser case. You can just tell
11 someone that they need to be sent over to me,
12 they'll route them to me once they get them.

13

14

15

16 (END OF PROCEEDINGS AT 11:13 A.M.)

17

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P-R-O-C-E-E-D-I-N-G-S

1
2
3 CERTIFICATE

4 I certify that the foregoing is a
5 correct transcript from the electronic sound
6 recording of the proceedings in the above-
7 entitled matter.

8
9
10 _____

11 Darla M. Chavez, Transcriber

12 Dated: _____

13 **Note: Any spellings not available to
14 transcriber are indicated with (phonetically
15 spelled)

16 **Note: Areas not understood by transcriber are
17 marked by (unintelligible at* and then the number
18 corresponding to digital recording)

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